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No. 00-260

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Petitioner,

v.

NORTHWEST AIRLINES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether under the Railway Labor Act, arbitration of statutory claims is a mandatory subject of collective bargaining — *i.e.*, one about which the employer and union are compelled by law to negotiate.

STATEMENT PURSUANT TO RULE 29.6

Respondent, Northwest Airlines, Inc., is a wholly-owned subsidiary of Northwest Airlines Corporation, a publicly traded company. As of December 31, 1999, based on a Schedule 13G filed with the Security and Exchange Commission, AXA Financial, Inc. (formerly known as the Equitable Companies Incorporated), through subsidiaries and affiliates, had a beneficial ownership of more than 10% of the stock of Northwest Airline Corporation.

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Northwest Airlines, Inc., respectfully submits this brief in opposition to the petition for certiorari in this case.

STATEMENT OF THE CASE

The petition filed by the Air Line Pilots Association (ALPA) mischaracterizes the proceedings below in two material respects:

1. As explained in greater detail in the Argument section below, ALPA has distorted beyond recognition the question presented — and the position ALPA has taken previously in this litigation — in order to lend some credence to the asserted basis for its petition. ALPA now claims that the question presented is ALPA's "authority to enter into a binding arbitration agreement," *i.e.*, to bind its members by agreeing in collective bargaining that statutory discrimination claims must be submitted to arbitration. Pet. 8. In the courts below, ALPA insisted that "the fundamental issue *is not* whether a union can waive an individual's rights under Title VII with or without his consent. . . ." Brief for Appellee/ Cross-Appellant at 27 (emphasis added). Rather, ALPA presented the question purely as a labor law question on the scope of mandatory collective bargaining. ALPA argued that the court of appeals should "*preclude* the union from imposing compulsory arbitration through collective bargaining agreement[s], but nevertheless require collective bargaining with respect to whether the employer will be permitted to obtain individual arbitration agreements from employees, and if so, what the terms of those agreements will be." Pet. for rehearing *en banc* at 4 (emphasis added).

The reason for ALPA's facile detour is obvious; the question actually answered by the court of appeals is plainly not cert-worthy. It was decided *en banc* without dissent, and is a question of first impression in *any* court. While there is at least some semblance of a circuit split on the question ALPA now champions, the two questions are quite different. The lower courts were never asked to pass upon the question ALPA now claims to be presented here. For this reason alone, certiorari should be denied.

2. ALPA claims that Northwest's argument below rested entirely on the ongoing validity of this Court's decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), for the proposition that arbitration of statutory claims is an impermissible subject of collective bargaining. Pet. 3. That describes Northwest's argument inaccurately. Although Northwest did rely on *Alexander* in part, it also argued that arbitration of statutory claims is not within the scope of the statutory phrase "rates of pay, rules, and working conditions" — the scope of mandatory bargaining — even apart from *Alexander*. In other words, even if *Alexander* were reversed on the question whether arbitration is an impermissible subject of bargaining, it is another, entirely separate, issue whether arbitration is then merely a permissible subject of bargaining, or a mandatory subject.

SUMMARY OF ARGUMENT

ALPA attempts to contrive a colorable argument for certiorari in this case by gerrymandering the issue presented. ALPA claims repeatedly that the question posed is whether a union "has authority" to enter into an agreement binding its members to arbitrate their individual statutory claims. Pet. 6, 8, 9, 10. This question is not cert-worthy. It has been answered definitively by this Court, and the lower court authority is all but one-sided.

But that was not the question presented to the court of appeals, nor is that question presented here. The real question at issue is not the scope of the union's "permissive" bargaining authority — *i.e.*, would an agreement reached by the union and the employer be enforceable against individual union members — but whether a topic of bargaining can be mandatory for the employer when the union has no authority to conclude an agreement that is final and binding on each of its members. The court of appeals held that the answer must be no. "[T]he essence of collective bargaining is a notion of mutuality"; with respect to mandatory subjects of bargaining, "each side [must have] at least the authority both to offer and to concede." Pet. App. 14a, *quoting Brotherhood of R.R. Trainmen v. Akron & Barberton Belt R.R.*, 385 F.2d 581, 603 (D.C. Cir. 1967). Although this labor law principle on which the court of appeals based its decision is well-settled, the precise question the court answered was one of first impression, and therefore it is not appropriate for review on certiorari.

REASONS FOR DENYING THE WRIT

I. THE QUESTION PRESENTED BY PETITIONER WAS NEVER CONSIDERED BY THE COURTS BELOW

As explained in the Statement, ALPA's position in this case has undergone a remarkable transformation. Until arriving in this Court, ALPA had steadfastly insisted that the question presented by this case "*is not* whether a union can waive an individual's rights under Title VII with or without his consent. . . ." Brief for Appellee/Cross-Appellant at 27 (emphasis added). Rather, until now, ALPA has argued that the law should "*preclude* the union from imposing

compulsory arbitration through collective bargaining agreement[s], but nevertheless require collective bargaining with respect to whether the employer will be permitted to obtain individual arbitration agreements from employees, and if so, what the terms of those agreements will be." Pet. for rehearing *en banc* at 4 (emphasis added).

Now, ALPA is convinced that the issue it studiously avoided in the lower courts is precisely the one this Court must address: "whether a union has authority . . . to enter into an agreement that requires the represented employees to submit to binding arbitration any claims arising under federal anti-discrimination statutes." Pet. 6. ALPA's threshold problem, however, is that this new issue — the scope of the union's *permissive* bargaining authority — was never presented to the lower courts for consideration. As ALPA's Complaint had requested, the district court held that the subject was a mandatory one — at least for the employer — and the court of appeals rejected that view. The court never was asked to pass upon the scope of the union's permissive authority.

This Court has frequently, and repeatedly, warned that it is not inclined to serve as an incubator for whatever new legal theories a party might devise after losing in the lower courts. This Court "do[es] not decide in the first instance issues not decided below." *NCAA v. Smith*, 526 U.S. 459, 469 (1999), *citing Roberts v. Galen of Va., Inc.*, 525 U.S. 253-54 (1999) and *United States v. Bestfoods*, 524 U.S. 51, 72-73 (1998); *see also Taylor v. Freedland & Koontz*, 503 U.S. 638 (1992) (court will not consider argument raised for first time in brief if not raised below).

In this case, the question ALPA asked this Court to decide: (a) was not decided below; (b) was not presented below; indeed (c) was explicitly, unambiguously, and

repeatedly *disclaimed* by ALPA below. While certiorari would not be warranted (as explained below) on *either* the question *actually* presented *or* the question ALPA now sponsors, even if the Court were inclined to review one of those questions, this case would not provide an appropriate vehicle to do so.

II. THERE IS NO REASON TO REVIEW THE QUESTION ACTUALLY RESOLVED BY THE COURT OF APPEALS

None of the ordinary bases for certiorari is present in this case. As explained in subsection A below, the court of appeals' decision does not conflict with any decision of this Court. Similarly, the decision below neither creates nor exacerbates any division of authority on the question, because it is a question of first impression. As explained in Section B, the decision below was entirely correct; the court of appeals sensibly applied settled law about the duty to bargain to unremarkable and uncontested facts.

A. The Question Addressed Below Is One Of First Impression

ALPA suggests indirectly that the decision below is at odds with at least one decision of this Court, and argues that "the courts of appeals are . . . divided" on the question ALPA now claims to present. Pet. 6. Neither claim is accurate.

First, ALPA claims that the Court should use this case to resolve the "tension" between *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) and *Gilmer v. Interstate Johnson/Lane Corp.*, 500 U.S. 20 (1991). Pet. 6-7, *quoting Wright v. Universal Maritime Service Corp.*,

525 U.S. 70, 75-76 (1998). While the two cases reflect different attitudes about the efficacy of arbitration for the resolving statutory claims, neither case arose under federal labor law, and whatever tension exists between the cases is entirely irrelevant to the question presented here.

Indeed, with respect to the question at issue here, the cases are entirely consistent. The *Alexander* Court concluded that the rights conferred by federal anti-discrimination law are individual, not collective. While a union has broad authority over collective rights, the Court concluded, a union has no role whatsoever in the disposition of individual statutory rights. Thus, the Court held, the individual rights created by federal statute "can form no part of the collective bargaining process." *Id.* at 51 (emphasis added).[1] In *Gilmer*, the Court held that an individual could enter into a pre-dispute agreement to arbitrate claims arising from federal discrimination law.

These holdings are entirely consistent with each other and with the decision below. The court of appeals in this case held that while an *individual* might agree to arbitrate any statutory discrimination claim she might come to possess (following *Gilmer*), the employer is not required to bargain with the union representing that individual before broaching the subject of arbitration with its employees (following *Alexander*). Even if there is some residual tension between other aspects of *Gilmer* and *Alexander*, that tension has no consequence at all in this case.

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1. The Court has subsequently confirmed this distinction in *Barrentine v. Arkansas-Best Freight Sys., Inc.*, 450 U.S. 728, 734 (1981); *McDonald v. West Branch*, 466 U.S. 284, 291 (1984); and *Livadas v. Bradshaw*, 512 U.S. 107, 127 n.21 (1994).

Second, ALPA incorrectly suggests that there is a division of authority among the courts of appeals exists warranting action by this Court. ALPA cites only to cases in which an employer has attempted to enforce an existing arbitration agreement voluntarily bargained by the employer and the union. Pet. 6-7. Those cases did not concern whether labor law *requires* collective bargaining over the arbitration of statutory claims, but the entirely different question whether an arbitration agreement, once reached, would be enforceable against the union's members under the anti-discrimination laws.[2] No such agreement exists in this case.

B. The Court Of Appeals Resolved This Case Correctly

ALPA's Complaint below raised only one claim — an alleged violation of the duty to bargain under the Railway Labor Act. ALPA insisted below, and the district court held, that the arbitration of statutory claims is a mandatory subject

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2. In labor law parlance, the possible subjects for collective bargaining are divided into three categories: mandatory, permissive, and impermissible or unlawful. Parties are obligated to bargain in good faith on demand over topics in the first category, are permitted to, but are not required to, bargain over topics in the second category, and are prohibited from bargaining over topics in the third category. *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). Although the *Borg-Warner* case construed the meaning of the NLRA's command to bargain over "rates of pay, wages, hours of employment, [and] other conditions of employment," courts commonly apply the same mandatory-permissive distinction in construing the RLA's similar mandate to bargain over "rates of pay, rules, [and] working conditions." *Id.* at 344. *See, e.g., Japan Air Lines, Inc. v. IAM*, 538 F.2d 46 (2d Cir. 1976); *ALPA v. United Airlines, Inc.*, 802 F.2d 886, 902 (7th Cir. 1986), *cert. denied*, 480 U.S. 946 (1987).

of bargaining for the employer. The district court also found, however, that arbitration agreements were not a mandatory subject for the union, but instead were a unique subject of bargaining, one on which the union had the power to obstruct employer action, but no authority to conclude an enforceable agreement.

This conclusion was premised on a fundamental misunderstanding of the nature of a mandatory topic of collective bargaining. The defining characteristic of the "mandatory subject" label is the union's role as the *exclusive* bargaining representative of the employees on that subject. When employees select union representation, they are "deprived by [federal labor law, here the Railway Labor Act] of the right, which they would otherwise possess, to . . . bargain individually on behalf of themselves as to the matters which are properly the subject of collective bargaining." *Steele v. Louisville & Nashville R.R.*, 323 U.S. 192, 200 (1944). On mandatory topics of bargaining, an employer has a statutory obligation to bargain with the union representing its employees — and only that union. 45 U.S.C. § 152, Ninth; *see also Virginia Ry. v. System Fed'n No. 40*, 300 U.S. 515 (1937); *BMWE v. Grand Trunk Western R.R.*, 961 F.2d 1245 (6th Cir. 1992); *Skyways, Inc. v. NMB*, 738 F.2d 339, 342 (8th Cir. 1984). The district court effectively created a new category of bargaining subjects, a category where the employer is obligated to bargain, but the union has no authority to reach a final and binding agreement. As this Court has explained, and as the court of appeals recognized, this cannot be:

> National labor policy has been built on the premise that by pooling their economic strength and acting through a labor organization freely

> chosen by the majority, the employees of an appropriate unit have the most effective means of bargaining for improvements in wages, hours, and working conditions. *The policy therefore extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees*. Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents. . . . *Thus only the union may contract the employee's terms and conditions of employment*. . . .

(Footnotes omitted). *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967) (emphasis added).

Thus, on the question actually presented and decided below, the court of appeals simply applied settled labor law. No contrary law exists, and no useful purpose would be served by granting review in this case.

III. THE QUESTION POSED BY PETITIONERS HAS ALREADY BEEN RESOLVED BY THIS COURT, AND THERE IS NO APPRECIABLE DIVISION OF AUTHORITY ON THAT QUESTION

As previously explained, the question ALPA poses in its petition was never answered below. But even if this question were properly presented in this case, review would still not be warranted.

First, the question has been answered authoritatively, and repeatedly by this Court. In *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), the Court held that the arbitration of claims arising under a collective bargaining agreement did not foreclose litigation of related issues under Title VII of the Civil Rights Act of 1964. The plaintiff in *Alexander* was a union member who first challenged his termination by means of a grievance under the non-discrimination clause of a collective bargaining agreement. He lost. He then filed a discrimination claim under Title VII in federal court. The district court dismissed the claim, finding that the lawsuit was barred by the adverse arbitration decision, but this Court ultimately reversed. The Court explained that a union

> may waive certain statutory rights related to *collective* activity, such as the right to strike. These rights are conferred on employees collectively to foster the processes of bargaining and properly may be exercised or relinquished by the union as collective-bargaining agent to obtain economic benefits for union members.

Id. at 51 (emphasis added). The union's bargaining authority, however, extends only to *collective* rights; individual rights, like those granted by Title VII, cannot be part of the collective bargaining process:

> Title VII, on the other hand, stands on plainly different ground; it concerns not majoritarian processes, but an individual's right to equal employment opportunities. . . .

Id. at 51.

The Court explained that the personal quality of individual rights makes them unacceptable as topics for collective bargaining: "in the collective bargaining process, the interests of the individual employee may be subordinated to the collective interests of all employees in the bargaining unit." *Id.* at 58. On topics within the scope of its authority, a union is permitted to compromise the interests of individuals, as well as those of sub-groups within the unit, to achieve the best bargain possible for the unit as a whole.[3] *Alexander* thus rests on the conclusion that the process of collective accommodation is antithetical to the notion of individual rights. The decision whether to arbitrate statutory and wrongful discharge claims is an individual one; for this reason, it "*can form no part of the collective bargaining process*." *Id.* at 51 (emphasis added).

This fundamental distinction between collective rights — which the union has authority to waive — and individual rights — over which the union has *no* authority — has been reaffirmed at least three times by this Court since *Alexander*.[4]

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3. *See Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65 (1991); *see also Vaca v. Sipes*, 386 U.S. 171 (1967); *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).

4. This Court has applied the distinction between collective and individual rights equally under the Railway Labor Act and the National Labor Relations Act. In *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994), the employer argued that a wrongful discharge claim brought under a Hawaii statute was subject to mandatory arbitration under the Railway Labor Act, which requires arbitration of any dispute which "grow[s] out of grievances or out of the interpretation and application of agreements concerning rates of pay, rules, or working conditions." 45 U.S.C. § 153, First

(Cont'd)

In *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 734 (1981), the Court found that a union had no authority to bargain about the arbitration of an individual's federal wage claim under the Fair Labor Standards Act, 29 U.S.C. § 210 *et seq.*: "the rights petitioners seek to assert in this action are independent of the collective bargaining process. They devolve on petitioners as individual workers, not as members of a collective organization." *Id.* at 745. The Court explained that collective and individual statutory rights stem from "[t]wo [fundamentally different] aspects of national labor policy":

> The first [aspect], reflected in statutes governing relationships between employers and unions, encourages the negotiation of terms and conditions of employment through the collective bargaining process. The second, reflected in statutes governing relationships between employers and their individual employees, guarantees covered employees specific substantive rights.

Id. at 734.

(Cont'd)

(i). Grounding its decision on the distinction between rights arising from the collective agreement and those arising from statute or common law, the Court held that because the collective bargaining agreement was not the source of the rights asserted, the wrongful discharge claim was not subject to mandatory arbitration. *Accord Lingle v. Norge Div. of Magic Chef*, 486 U.S. 399 (1988) (National Labor Relations Act; employee not required to arbitrate under collective bargaining agreement state law cause of action); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985).

In *McDonald v. City of West Branch*, 466 U.S. 284, 291 (1984), the Court again relied on this fundamental distinction in holding that a claim under 42 U.S.C. § 1983 was not barred by the outcome of an arbitration under a collective bargaining agreement. A union, the Court held, cannot control the litigation of an individual's statutory claims because "[t]he union's interests and those of the employee are not always identical or even compatible." More recently, in *Livadas v. Bradshaw*, 512 U.S. 107, 127 n.21 (1994), the Court again referred to the "distinctly separate nature of . . . contractual and statutory rights" and warned that in the collective bargaining process, "the interests of the individual employee may be subordinated to the collective interests of all employees in the bargaining unit."

The lower courts have had no problem harmonizing these cases with the holding in *Gilmer* — the source of the "tension" relied upon by ALPA. The rule resulting from these cases is that "an individual [may] waive his prerogative to pursue a statutory right in a judicial forum, [but] a labor union cannot make such a waiver prospectively on an individual's behalf." *Penny v. United Parcel Service*, 128 F.3d 408, 413 (6th Cir. 1997); *accord Pryner v. Tractor Supply Co.*, 109 F.3d 354, 362-63 (7th Cir.), *cert. denied*, 118 S. Ct. 295 (1997); *Varner v. National Super Markets, Inc.*, 94 F.3d 1209, 1213 (8th Cir. 1996) (arbitration provision in collective bargaining agreement does not bar federal court litigation of Title VII claim); *Albertson's, Inc. v. United Food & Commercial Workers Union*, 157 F.3d 758 (9th Cir. 1998) (arbitration provision in collective bargaining agreement does not bar federal court litigation of FLSA claims), *petition for cert. filed*, 67 U.S.L.W. 3505 (U.S. Feb. 4, 1999) (No. 98-1270); *Harrison v. Eddy Potash, Inc.*, 112 F.3d 1437, 1453 (10th Cir. 1997) ("statutory employment claims are

independent of a collective bargaining agreement's grievance and arbitration procedures"), *vacated on other grounds*, 118 S. Ct. 2364 (1998), *reaffirmed in relevant part*, 158 F.3d 1371 (10th Cir. 1998); *Brisentine v. Stone & Webster Eng'g Corp.*, 117 F.3d 519, 526 (11th Cir. 1997) ("a mandatory arbitration clause does not bar litigation of a federal statutory claim unless . . . the *employee* [has] agreed *individually* to the contract containing the arbitration clause — *the union having agreed for the employee during collective bargaining does not count*") (emphasis added).

Only the Fourth Circuit has even suggested a contrary view, and it did so while recognizing that its decision was inconsistent with *Alexander*. *See Austin v. Owens-Brockway Glass Container*, 78 F.3d 875 (4th Cir.), *cert. denied*, 519 U.S. 980 (1996). In *Austin*, the Fourth Circuit correctly gleaned from *Gilmer* (and a number of other decisions of this Court)[5] the conclusion that *Alexander*'s disdain for the arbitration process had become outmoded. Without further analysis, however, the Fourth Circuit then concluded, incorrectly, that a union and an employer might deal collectively with the statutory rights of the union's members by obligating those members to arbitrate their statutory claims.

The Fourth Circuit's decision relates at most to whether arbitration of statutory claims should be moved from the list of impermissible topics to the list of permissible ones. It did not discuss at all the question whether the topic is a mandatory one. While the Fourth Circuit correctly observed

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5. *E.g.*, *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985).

that since *Alexander*, Congress and the courts had accepted arbitration as an appropriate mechanism for resolving statutory claims, it did not address at all the fundamental issues of labor law presented here. As the *Gilmer* Court held — and as experience has shown — individuals are capable of determining the manner in which their statutory claims are to be resolved. There is no reason to insinuate those individual rights into the collective bargaining arena.

IV. THERE IS NO QUESTION OF NATIONAL IMPORTANCE PRESENTED IN THIS CASE

To ALPA, this case raises "an important question of labor law," but it is apparent that ALPA views the case as important only because ALPA objects to arbitration as a mechanism for resolving statutory claims. ALPA has been careful to avoid specifying its concerns, perhaps because this Court has refuted — effectively and directly — the alleged deficiencies of arbitration in a series of prior decisions.[6] *See Gilmer v. Interstate Johnson/Lane Corp.*, 500 U.S. 20 (1991); *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985).

Nonetheless, it is apparent that ALPA's antipathy for arbitration — and therefore its claim that this case raises issues of national importance — stems from the conviction that it must "protect" its members from a dispute resolution process in which ALPA believes individuals fare poorly, at least when that system is compared to federal court litigation. That contention is demonstrably incorrect.

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6. There was no allegation in ALPA's Complaint, and no argument made below, that the arbitration process utilized by Northwest was in any way one-sided or unfair.

1. In employment discrimination cases, grievants in arbitration win *far more often* than do their counterparts in the federal courts. In employment cases administered by the American Arbitration Association in 1992, *employees won 73% of the claims they filed.* L.J. Maltby, *Private Justice: Employment Arbitration and Civil Rights*, 30 Colum. Hum. Rts. L. Rev. 29, 45-46 (1998), *citing* L.B. Bingham, *Is There A Bias In Arbitration Of Nonunion Employment Disputes? An Analysis Of Actual Cases and Outcomes*, 5 Int'l J. of Conflict Mgmt. 369, 378 (1995). By comparison, less than 6% of the employment cases filed in federal district court even get to trial.[7] For the 94% of federal cases that never get to trial, the alleged advantages of the jury system are mere illusion.

2. Even for the few federal court employment discrimination litigants who do get to trial, the cost of attaining that goal may be all out of proportion to the achievement. The median time from complaint to trial is 19 months.[8] Ten percent of the cases actually tried have waited for well over three years to reach that point. *Id.* During these years of pretrial machinations in district court, the parties and their lawyers often spend large sums of money — often sums much greater than the pure economic value of the underlying case could possibly justify.

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7. *See Judicial Business of the United States Courts*, Administrative Office of the United States Courts (hereafter "Report"), Supplemental Table C-4. The entire report, and all of the associated tables, are available at www.uscourts.gov/judbus1999/index.html.

8. Report, Table C-5. In some districts, the *average* wait is nearly three years. *Id.*

Although reliable empirical data on the litigation costs in employment cases are difficult to come by, courts routinely approve fee petitions for hundreds of thousands of dollars in fees in routine single-plaintiff discrimination cases. *See, e.g., Hudson v. Reno*, 130 F.3d 1193 (6th Cir. 1997) ($430,752 fee award in single plaintiff Title VII case where plaintiff recovered $300,000), *cert. denied*, 525 U.S. 822 (1998); *Bevan v. Honeywell, Inc.*, 118 F.3d 603 (8th Cir. 1997) (awarding fee of $250,000 — reduced from the claimed $440,000 — in single plaintiff ADEA case where plaintiff obtained back pay award of $275,000); *Moore v. University of Notre Dame*, 22 F. Supp. 896 (S.D. Ind. 1998) (same; $394,865 fee award under ADEA in case where plaintiff recovered $161,000); *Perdue v. City University of New York*, 13 F. Supp. 2d 326 (E.D.N.Y. 1998) (same; $339,339 fee award; $443,000 recovery); *Martini v. Federal Nat'l Mortgage Ass'n*, 977 F. Supp. 482 (D.D.C. 1997) (approving more than $230,000 in trial-court-only fees), *rev'd on other grounds*, 178 F.3d 1336 (1999), *cert. dismissed*, 120 S. Ct. 1155 (2000). As these figures demonstrate, despite the best efforts of courts and counsel, the promise of Rule 1 of the Federal Rules of Civil Procedure — "the just, speedy, and inexpensive determination of every action" — is often painfully elusive. These undeniable facts, however, have not significantly reduced the crush of employment law litigation facing the federal courts. Employment discrimination cases represented 14% of the federal district court case load. Report, Table C-2A.

3. Litigants pay other prices for these delays and expenses of litigation, especially where those claims involve incumbent employees. In a typical failure-to-promote case, for example, unavoidable human emotions will complicate the working relationships between decisionmaker, successful

candidate, and disappointed applicant while the litigation wends its way through the system; animosities among the personalities involved in the dispute fester, the underlying employment decisions are effected under a cloud of uncertainty, and productivity suffers. These circumstances, which are often unavoidable in the kinds of highly personal disputes at issue in most employment cases, give all parties to the dispute a significant interest in a prompt and binding resolution of the matter.

For these reasons, the arbitration of discrimination claims is entirely consistent with the goals and objectives of federal law. Thus, there is no basis for the apocalyptic tone of ALPA's petition. When an individual processes a discrimination claim through arbitration, he merely "trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." *Mitsubishi*, 473 U.S. at 628.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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